

Supreme Court Summaries

Opinions filed May 19, 2016

Fattah v. Bim, 2016 IL 119365

Appellate citation: 2015 IL App (1st) 140171

JUSTICE BURKE delivered the judgment of the court, with opinion.

Chief Justice Garman and Justices Freeman, Thomas, Kilbride, Karmeier, and Theis concurred in the judgment and opinion.

Mirek Bim was made defendant in this 2011 Cook County lawsuit seeking \$86,000 in damages for the collapse of the back patio of a Glenview home which his company, Masterklad, Inc., had built and sold to its first occupant in 2007. His wife was also named as a defendant. The house was resold in 2010 to John Fattah, who is the plaintiff here and its second owner-occupant. The corporation has since been dissolved.

The complaint sought recovery on the theory that there is an implied warranty of habitability as to new residential construction and that this warranty extended to a second purchaser, such as the plaintiff. He had purchased the home from its first owner on an “as is” basis, and that original owner made no representations as to the condition of the property.

As to a newly constructed home, there is indeed an implied warranty of habitability that it will be free from latent defects which unreasonably interfere with its intended use, and it has been held that this warranty may be extended to a second purchaser if there is no waiver. However, in this case, a valid, bargained-for waiver of the warranty was executed between the builder-vendor and the first purchaser.

In view of the waiver, the circuit court, which held a bench trial, denied relief, and the plaintiff appealed. The appellate court reversed the circuit court, taking the view that the original implied warranty of habitability could be extended to a second purchaser. In this decision, the Illinois Supreme Court held that the appellate court had erred. The implied warranty of habitability may not be extended to a second purchaser when a valid, bargained-for waiver of the warranty has been executed between the builder-vendor and the first purchaser, as was the case here.

The appellate court was reversed, and the circuit court’s judgment in favor of the defendants was affirmed.